

Volume 3 of 3, Part A
VI. POST-TRIAL FILINGS

Congress of the United States
Washington, DC 20515

September 28, 2010

Via Electronic Mail

The Honorable Claire McCaskill, Chair
The Honorable Orrin G. Hatch, Vice Chair
Senate Impeachment Trial Committee
United States Senate
Russell Senate Office Building, Room B-34-A
Washington, DC 20002

Re: Impeachment of Judge Porteous -- Response to Inquiry of Senator Whitehouse

Dear Senator McCaskill and Senator Hatch:

This letter is being submitted to the Senate Impeachment Trial Committee (SITC) in response to Senator Whitehouse's inquiry made during the SITC's evidentiary hearing as to the nature of the investigation conducted by the House subsequent to the Fifth Circuit disciplinary proceedings.

The Fifth Circuit proceedings focused on the conduct that was eventually the subject of Article I (curatorships and the Liljeberg case) and Article III (bankruptcy). The attorneys who handled the disciplinary hearing on behalf of the Fifth Circuit did a limited independent investigation. In essence, they took certain allegations from the Department of Justice's (DOJ) complaint letter and presented evidence received from DOJ supporting those allegations to the Fifth Circuit Committee.

The House commenced its investigation in May 2009. From that point forward, the House undertook the following investigative steps that materially increased and enhanced the relevant evidence.

Article I

The evidence presented to the Fifth Circuit Committee did not include the transcript of the recusal hearing in the Liljeberg case. To the best of our knowledge, the transcript also had not been obtained by the Department of Justice in its investigation. The House unearthed that critical piece of evidence during its investigation into the facts surrounding the handling of the Liljeberg case.

In the course of its investigation the House interviewed a secretary in Mr. Amato's office who had never been contacted previously. She provided a computerized list of curatorships that had been assigned to Mr. Creely. The House attorneys then requested and obtained from the 24th Judicial District Court the underlying curatorship records, and identified from the group nearly 200 curatorships assigned by Judge Porteous to Mr. Creely. These records permitted a far

more focused and informed estimate by both Mr. Creely and Mr. Amato of the amount of cash (\$10,000 each) they provided to Judge Porteous.

Finally, the House met and deposed Leonard Levenson (Mr. Amato's co-counsel in the Liljeberg case) to establish that he traveled with Judge Porteous and paid for expensive meals for the Judge while the Liljeberg case was pending. The House also deposed Donald Gardner (whom Lifemark hired "to level the playing field" after Lifemark's recusal motion was denied) to establish in detail the meals, cash and other things of value Mr. Gardner provided to Judge Porteous.

Article II

The relationship between the Marcotte bail bonding business and Judge Porteous was not addressed in the Fifth Circuit proceedings. The House investigation uncovered the facts about that relationship during the course of its investigation into other allegations of misconduct. The House interviewed, among others, Louis Marcotte, Lori Marcotte, Aubry Wallace, Jeff Duhon, Rafael Goyeneche of the Metropolitan Crime Commission (MCC), Ronald Bodenheimer, Rhonda Danos, Darcy Griffin, Bruce Netterville, Mike Reynolds, Robert Rees, several state court judicial officers and numerous other individuals. None of these individuals, with the exception of Mr. Bodenheimer, had testified in the grand jury. The House obtained the relevant court records for Aubry Wallace and Jeff Duhon, reflecting Judge Porteous's actions to assist those individuals in setting aside or expunging their convictions. Finally, the House obtained the report of witnesses and other relevant documents from the files of the MCC.

Article III

Judge Porteous's bankruptcy proceedings and the documentary evidence related to those proceedings were explored in the Fifth Circuit. The House conducted an independent analysis of the record and addressed with Mr. Lightfoot certain defenses raised by Judge Porteous at the Fifth Circuit (for example, Judge Porteous's assertion that Mr. Lightfoot had affirmatively approved Judge Porteous's non-disclosure of his pending tax refund, when Mr. Lightfoot would testify otherwise). Further, the House had the Chief Judge of the United States Bankruptcy Court in Maryland, Judge Duncan Keir, review the record and testify as to its significance. Judge Keir also testified before the SITC.

Article IV

The allegations concerning false statements to the Senate contained in Article IV were not investigated by the Fifth Circuit. The House obtained the FBI background check and the relevant questionnaires from the DOJ and from the Senate Judiciary Committee. The House also obtained relevant testimony from Mr. Marcotte and Mr. Creely in which they admitted making false statements on Judge Porteous's behalf when interviewed by the FBI. The House further developed the evidence concerning Judge Porteous's delay of the Wallace set-aside until after Senate confirmation. The House located and interviewed two retired FBI agents who interviewed Judge Porteous during the background check, ultimately opting to call former Agent Hamil (who handled both interviews of Judge Porteous) before the SITC.

Other Investigation By The House

The House developed evidence of activities by Judge Porteous that was not the subject of the Articles, though these incidents were included in the House Judiciary Committee's Report. This includes Judge Porteous's receipt of hunting trips in the 2000-2005 time-frame from attorneys and parties with matters pending before him, and his failure to report those trips on his Financial Disclosure Forms.

In addition, the House independently reviewed the allegations that were the subject of the Fifth Circuit proceeding by re-interviewing and in some cases deposing essential witnesses (e.g. Messrs. Amato, Creely, Mole, Lightfoot, and Gardner) to explore specific areas of their testimony.

Finally, the House engaged a trio of distinguished legal scholars to testify as a panel, review the evidence, and offer their opinions on various issues. These were Professor Akhil Amar of Yale Law School, Professor Michael Gerhardt of the University of North Carolina Law School (Chapel Hill) and Professor Charles Geyh of the Indiana University School of Law.

The investigative steps discussed in this letter and in the House Judiciary Committee's Report generally comprise the areas of investigation that added to the evidence before the Fifth Circuit. With the evidence that they possessed, a strong majority of the Fifth Circuit concluded that the case should be referred for possible impeachment. We believe that the additional information uncovered in the investigation by the House makes the case for impeachment even stronger.

We hope this letter is responsive to Senator Whitehouse's request.

Sincerely,


Adam Schiff, Manager


Bob Goodlatte, Manager